IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO :22066 of 1997

Dated: 25.01.2007

Between:
Bantu Simhachalam, S/o Dalaiah, 75 years,
Cultivation, resident of Singavaram, Kothagudem,
Denduluru Mandal, W.G.District.

..... PETITIONER

AND

1.The District Collector, W.G.District, Eluru.
2.The Mandal Revenue Officer, Denduluru Mandal,
Denduluru, W.G.District.
3.Executive Engineer, Godavari Western Division,
Nidadavole, W.G.District.
4.Assistant Engineer, Irrigation Department,
Gundugolanu, Bhimadole Mandal,
W.G.District.

...RESPONDENTS

THE HON'BLE MR JUSTICE GOPALA KRISHNA TAMADA

WRIT PETITION NO.22066 of 1997

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the respondents in trying to dispossess the petitioner from the house in Assessment NO.673 situated in an extent of 400 square yards near 38/3-4 Mile at Godavari Eluru Canal R/B, Singavaram Kothagudem Gram Panchayat, Denduluru Mandal, West Godavari District, without giving any notice and without affording any opportunity of hearing, as illegal and arbitrary and consequently direct the respondents not to interfere with the petitioner's peaceful possession and enjoyment of the said land.

The case of the petitioner is that there is a Government Poramboke land at Kothagudem Gram Panchayat and originally, the said land belonged to P.W.D.

department. In the year 1951, the Executive Engineer, Godavari Western Division, Nidadavole, by proceedings, office file NO.7E granted sanction of 400 square yards of land near 38/3-4 Mile at Godavari Eluru Canal, Singavaram, Kothaghudem Gram Panchayat in his favour and since then he has been in possession and enjoyment of the said land without any hindrance and he has also constructed a house in the said land after obtaining necessary permission from the Gram Panchayat. His further case is that the Gram Panchayat has also given an assessment No.673 to the said house. However, on 09.09.1997 the 2nd respondent-Mandal Revenue Officer directed the petitioner to remove the said house on or before 13.09.1997 on the ground that the said occupation is illegal.

While entertaining this writ petition, this Court, on 12.09.1997, granted interim order in WPMP No.26881 of 1997 directing the respondents not to dispossess the petitioner from the house in question, pending disposal of the writ petition.

At this stage, it is not out of place to mention that neither any counter-affidavit has been filed by the respondents despite the summons served on them nor any explanation is forthcoming as to whether any such notice has been issued to the petitioner.

In the facts and circumstances of the case, without expressing any opinion on the merits of the case, I am of the view that though the approach of the petitioner is only on a mere apprehension, but the respondents have failed to prosecute the case by filing an appropriate counter-affidavit. However, a duty is caste on the respondents-officials to give an opportunity to the petitioner by way of issuing a notice before going to take the action, if any.

The writ petition is accordingly allowed with a direction to the respondents not to interfere with the peaceful possession and enjoyment of the land in question. However, this order will not preclude the respondents from taking any action after affording an opportunity to the petitioner in accordance with law in case the property in question is required for the public purpose.

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(GOPALA KRISHNA TAMADA, J)

25-01-2007
Gsn.